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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re NICOLE R., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

NICOLE R.,

Defendant and Appellant.

F045378

(Super. Ct. No. 03CEJ601113-1)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Rosendo Pena, Judge.

Tutti Hacking, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Julie A. Hokans and Robert Gezi, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Harris, Acting P.J., Levy, J., and Cornell, J.

Appellant, Nicole R., was charged in a petition filed on July 15, 2003, pursuant to Welfare and Institutions Code section 602 with felony violations of driving or taking a vehicle (Veh. Code, § 10851, subd. (a), count one) and receiving stolen property (Pen. Code, § 496, subd. (a), count two). On August 12, 2003, Nicole admitted count two and count one was dismissed. On August 26, 2003, the juvenile court ordered Nicole be placed in a group home.

On October 23, 2003, Nicole admitted an allegation in a first supplemental petition that she left the group home without permission. On October 30, 2003, the juvenile court ordered Nicole to be placed in a new group home.

On December 30, 2003, Nicole admitted an allegation in a second supplemental petition that she left the group home without permission. On January 23, 2004, the juvenile court committed Nicole to the juvenile hall substance abuse unit for 180 days.

On March 8, 2004, a third supplemental petition was filed alleging Nicole refused to participate in the substance abuse program. After a contested hearing on April 20, 2004, the juvenile court found the allegation true. The court committed Nicole to juvenile hall for 92 days, the balance of her prior 180-day commitment.

On appeal, Nicole contends the juvenile court abused its discretion in committing her to juvenile hall substance abuse unit.

FACTS

After Nicole was committed to the substance abuse unit, she was disruptive and uncooperative. On February 17, 2004, she stole and destroyed someone's Valentine card and left a community group without permission. Both of these incidents were violations of juvenile hall rules. Nicole failed on several occasions to attend required programming.

Nicole was carving and scratching on her wrists and arms. Nicole told her primary clinician on February 27, 2004, that she would do whatever was necessary to be removed from the program. On March 3, 2004, Nicole refused to participate in mental health services. Three days later, she refused to attend a required narcotics anonymous

meeting, stayed in bed, tore pages from a Bible, left her room strewn with paper, and ignored direct orders from juvenile hall staff. Nicole and all the minors in juvenile hall were told the rules and procedures during an intake process.

According to the probation report, Nicole's compliance with court-ordered conditions of probation was poor. Nicole refused to participate in the mental health portion of the program. She was a security risk, was disruptive, and made physical threats toward other minors in her dormitory. Nicole was noncompliant in all of the components of the substance abuse program. She refused to attend mandatory group sessions and mandatory school sessions.

The probation report noted Nicole was not complying with her case plan and that the progress toward reunification was unsatisfactory. The report recommended Nicole's guardian, her grandmother, participate in the reunification process. The probation officer noted it would be detrimental to Nicole to terminate the placement order and that she was still in need of services. The probation report concluded a return of Nicole to her guardian would create a substantial risk of detriment. The report recommended former findings and orders remain in full force and effect.¹

A psychological report was prepared in March 2004. The examiner noted that Nicole was alert and well oriented to time, place, and situation. Nicole was cooperative during the evaluation. Nicole denied having hallucinations and delusions but told the evaluator that she attempted suicide too many times to count. Nicole attempted to hang herself and overdosed on aspirin and sleeping pills. Nicole told the evaluator she did not

¹ There were two probation reports prepared for the hearing, which was continued to obtain the psychological report. The second report was a supplemental report prepared by the probation department after the psychological report dated April 19, 2004. The first report, dated March 9, 2004, recommended the court terminate Nicole's involvement with the substance abuse unit.

currently have any suicidal ideation. At the time of the evaluation, Nicole was on antidepressant medication.

Nicole was teary-eyed when she described her stepfather's sexual abuse. The stepfather's sexual abuse of Nicole began when she was 11 years old. Even though she had run away from home on a number of occasions, Nicole described her relationship with her mother as very good.

Nicole told the evaluator she had been involved with the ESF Bulldog gang. Nicole reported having sex with both males and females. Nicole was pregnant in December 2003, but had a miscarriage. Nicole has consumed alcohol, methamphetamine, cocaine, and marijuana. Because her family moved frequently, Nicole has attended several high schools. Nicole was taking medication for Attention Deficit Hyperactivity Disorder. Nicole has a history of anorexia and bulimia.

Nicole tested in the average range for IQ. She is functioning at a high school level in spelling, reading, and arithmetic. Nicole suffers from severe depression, irritability, has suicidal ideation, insomnia, fatigue, loss of appetite, and low self-esteem. Nicole also suffers from severe anxiety and panic attacks. Tests indicated that Nicole answered the evaluator's questions in an honest manner.

The evaluator recommended Nicole be placed into a structured living environment that models "prosocial behavior." Nicole needs to be monitored closely because of her vulnerability to suicide. The evaluator concluded Nicole also needs weekly therapy, to participate in an anger management program, a medical evaluation to follow-up with potential complications from her miscarriage, and a substance abuse treatment program.

Nicole's counsel argued she had a serious mental illness because she was carving her body. Counsel argued that the services provided to Nicole failed to address her needs and that additional services had to be provided to meet Nicole's needs. The juvenile court stated it had read the record, the probation report, and the psychological report.

The court noted Nicole's case presented difficulty because of the various factors that came into play including her psychological examination and her decision not to comply with court-ordered programs. The court found that additional confinement time over what was originally imposed would not meet Nicole's needs. The court ordered Nicole stay on probation. The court committed her to juvenile hall for 92 days and vacated Nicole's commitment to the substance abuse program at juvenile hall.

DISCUSSION

Nicole contends the court abused its discretion by committing her to juvenile hall for 92 days rather than to a group home where she could receive more comprehensive services. Nicole contends the juvenile court abused its discretion in ordering her commitment to juvenile hall as a condition of her probation.

We initially note that both parties argue that it was error for the juvenile court to send Nicole back to the substance abuse unit. The juvenile court, however, specifically stated on the record that Nicole's "commitment to the Floyd Ferrell substance abuse program is ordered vacated." The clerk's transcript also notes that the original orders of the juvenile court were modified in that the order Nicole attend the "SAU is vacated."

Nicole also argues that she could not receive counseling services at juvenile hall because, although she was Medical eligible, she could not receive medical services during a juvenile hall commitment. Nicole's counsel argued to the juvenile court that Nicole did not receive counseling services due to her commitment. We agree with respondent that the unsworn argument of counsel during the hearing was not evidence that counseling services were not provided to Nicole. (See *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414, fn. 11.)

Also, a memorandum in the augmented clerk's transcript from a program administrator with the juvenile hall substance abuse unit dated April 7, 2004, states that Nicole is eligible for counseling services through Family and Youth Alternatives only if she has Medical or is eligible for "medical treatment." Another letter in the augmented

clerk's transcript from April 7, 2004, indicates Nicole was referred to a psychiatrist, that she was given a prescription for her depression, and that she was being evaluated. We cannot tell from the record whether Nicole was eligible for Medical, but she was apparently eligible for "medical treatment" and was receiving psychiatric treatment. Thus, while Nicole was apparently not receiving services from Family Youth Alternatives, she was receiving services from at least one other medical provider.

Furthermore, the probation report notes there was a mental health component at juvenile hall in which Nicole refused to participate. We find the record does not support Nicole's contention, express or implied, that she was denied mental health services because of her juvenile hall commitment.

The type of disposition made by the juvenile court is within the court's sound discretion. The appellate court must indulge in all reasonable inferences from the evidence and the record to support the action of the juvenile court when there is substantial evidence to support them. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473; *In re Jose R.* (1983) 148 Cal.App.3d 55, 59; *In re Darryl T.* (1978) 81 Cal.App.3d 874, 877.) The fundamental premise of delinquency adjudication is that the court must focus on the dual concerns of the best interests of the minor and public protection. (*In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.)

On appeal, Nicole argues that the juvenile court should have committed her to a group home rather than to the balance of her original commitment to juvenile hall. We do not agree. Two prior sustained petitions found that Nicole absconded from two group homes without permission prior to her commitment to juvenile hall. If the group homes provided more services than those in juvenile hall, and there is no evidence in the record to support this contention, Nicole's conduct made it impossible for those services to be implemented while she was in the group homes or during her commitment to juvenile hall.

In juvenile hall, Nicole defiantly told staff she would do anything to get out of the program. Nicole refused to participate in the programming provided her by refusing to attend group counseling and education sessions. Nicole refused mental health counseling in juvenile hall. She violated the rules of her program and acted disruptively.

Both the prosecutor and the juvenile court were concerned that it would send an inappropriate message to Nicole for her to act defiantly and not finish the balance of her commitment. We agree. Though the record is clear that Nicole has serious emotional and psychological programs, there is nothing in the record to support Nicole's contention that the juvenile court's order deprived her of necessary services or that its order was inappropriate to her circumstances. Indeed, as noted above, Nicole was provided with psychiatric services during her stay at juvenile hall. Furthermore, Nicole refused to take advantage of the programming available to her at juvenile hall.

Based on Nicole's past conduct in group homes, as well as her conduct during her juvenile hall commitment, the juvenile court did not abuse its discretion in ordering Nicole to finish the remainder of her commitment to juvenile hall.

DISPOSITION

The juvenile court's judgment is affirmed.